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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

**BRISTOL BAY TELEPHONE  
COOPERATIVE, INC.** )

File No. \_\_\_\_\_

Petition for Waiver of the Federal )  
Communications Commission's Rules )  
Concerning Access Charge Reform, Price Cap )  
Performance Review for Local Exchange Carriers )  
Transport Rate Structure and Pricing, End User )  
Common Line Charge )

CC Docket 96-45

To: Common Carrier Bureau

**PETITION FOR WAIVER**

Bristol Bay Telephone Cooperative, Inc. ("Bristol Bay" or "Petitioner"), pursuant to Section 1.3 of the Federal Communications Commission's rules, by its attorneys, respectfully requests a waiver of Section 36.621(a)(4) of the Commission's rules which limits a telephone company's corporate operation expense amounts under Section 254(k) of the Telecommunications Act of 1934, as amended ("the Act"). As demonstrated herein, good cause exists for this waiver<sup>1/</sup> because the

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<sup>1/</sup> "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast  
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exceptional circumstances surrounding Bristol Bay's operations and expenses in rural Alaska warrant a deviation from the general rule which is in the public interest.

### **Background and Facts**

1. On December 30, 1997, the Commission adopted its *Fourth Order on Reconsideration, In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, CC Docket Nos. 96-45, 96-262, 91-213, 95-72, FCC 97-420, 13 FCC Rcd 5318 (released December 30, 1997) ("*Fourth Order on Reconsideration*"), which set forth a formula which limits the amount of corporate operations expense that a carrier can include in its high cost loop support mechanisms for the Universal Service Fund ("USF"). Petitioner seeks to remain compliant with the rules and continue its participation in the USF, however, the formula as defined limits the considerable actual costs and expenses experienced by Bristol Bay making compliance with 36.621(a)(4) uneconomical and burdensome.

2. Petitioner is a local exchange carrier which has provided service since 1974 to geographically remote areas of Alaska. Petitioner offers service in six exchange areas:

<b><u>EXCHANGE</u></b>	<b><u>LOCATION</u></b>	<b><u>NUMBER OF ACCESS LINES</u></b> (12/31/98)
246	King Salmon, Naknek, South Naknek	1,538
287	Levelock	58
464	Ekwok	50
533	Igiugig	32
596	Koliganek	58
693	New Stuyahok	<u>107</u>
		1,843

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(...continued)

Cellular Telephone Co., L.P. v. FCC 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Petitioner's service areas are comprised of fishing villages and other small communities in the westernmost part of the state. Bristol Bay's service areas are isolated from the larger cities and more highly populated regions of Alaska. Even travel to Petitioner's annual meetings of its own exchange customers requires chartered flights for Petitioner's personnel. Maintenance costs likewise include extraordinary travel expenses for technicians. And, any equipment or parts needed is routinely shipped by air or, in the summer months, by barge. Such expenses related to transportation and shipping are considerable. The unusual distances between service areas is worsened by extreme weather conditions which occur in the winter months. The combination of weather conditions and distances make travel between service areas difficult and expensive. However, if Bristol Bay did not serve these remote areas, the population in those communities would be without a reliable means of telecommunications. Bristol Bay's total plant investment is approximately \$6.2 million and the company has a workforce of only 21 employees. Indeed, were it not for the high cost support funding Bristol Bay receives via the universal service mechanism it would not be economically feasible for Bristol Bay to continue to provide local exchange service. Most persons in the fishing villages would not find alternative, satellite-based services to be affordable.

3. The enactment of the Telecommunications Act of 1996 ("Telecom Act") set in motion a chain of events which have placed unusual economic burdens on Bristol Bay. The Telecom Act has launched a large scale restructuring of the telecommunications industry by the Alaska Public Utilities Commission ("APUC"). Such action has been particularly difficult on Bristol Bay because it is a small, remotely-located company with limited internal resources. As a result, Bristol Bay has experienced a considerable escalation of its already high general and administrative expenses for legal and consulting fees due to the numerous, on-going regulatory policy proceedings before the APUC.

Specifically, the APUC has opened a variety of adjudicatory and rule-making proceedings which directly impact Bristol Bay and, in some instances, where Bristol Bay's participation was expressly mandated by the APUC.<sup>2/</sup>

4. In an effort to control costs as much as possible, Bristol Bay has participated in group efforts with similarly situated rural local exchange carriers whereby the carriers in the group share the cost of policy advocacy with the other companies. Notwithstanding the cost-sharing initiatives undertaken by Bristol Bay, the fact that several policy and rulemaking proceedings are going on simultaneously has worsened the financial impact on Bristol Bay.

#### **Request for Waiver**

5. Petitioner requests a waiver of Section 36.621(a)(4) which limits the corporate expenses allowed to be factored into the company's universal service high cost support mechanism. The extraordinary circumstances surrounding the offering of service in rural Alaskan villages warrant special consideration by the Commission.<sup>3/</sup> The small size of Bristol Bay's operations makes it

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<sup>2/</sup> Since 1997 the APUC has begun proceedings regarding the following issues: the governing of privately owned pay telephone services (2 proceedings), the reform of intrastate interexchange access charge rules, consideration of intrastate universal service, provision of telecommunications relay service, rules for local exchange competition (4 proceedings), consideration of market structure rules (2 proceedings), and the designation of carriers to receive universal service support (2 proceedings). This list is not exhaustive of all proceedings, however, all of these proceedings continue to be active.

<sup>3/</sup> The Commission previously has recognized the unique problems faced by service providers in rural Alaska, and has waived its rules accordingly. See Order In Re Alaska RSA No. 1 General Partnership and Bristol Bay Cellular Partnership Petition for Waiver and Special Relief, DA 97-2211 (October 15, 1997) and Order In the Matter of Arctic Slope Telephone Association Cooperative, Inc. Petitioner for Expedited Waiver of Section 36.621(a)(4) of the Commission's Rules (Corporate Operations Expense Cap), DA 98-2586 (December 22, (continued...))

impossible for Petitioner to participate in the plethora of APUC proceedings resulting from the Telecom Act without extensive reliance on outside consulting and legal expertise. There is no way a small rural organization such as Petitioner could afford to maintain in-house expertise to participate effectively in the numerous multifaceted proceedings which are currently before the APUC. Compliance with the current limit on corporate operations expenses deprives Petitioner of the high cost support that it needs in order to continue to provide economical and reliable service in the best interests of its customers.

6. Grant of Petitioner's request for waiver is in the public interest because the unique and unusual circumstances surrounding Petitioner's inability to comply with the cost cap limitation is due to circumstances beyond its control. The actions of the APUC are not something which Petitioner can control, yet it is necessary (and in some instances required) that Petitioner participate in the proceedings. Furthermore, the expenses are compounded by the unique attributes of Petitioner's service areas.<sup>4/</sup>

7. The size and terrain of a state such as Alaska warrant special attention by the Commission when new rules threaten the ongoing viability of service. Petitioner initiated local exchange service in 1974 (beginning in the King Salmon/Naknek area), attempting to offer the best service possible to the rural portions of Alaska which would not otherwise receive telephone service. In this case, the public interest would not be served by requiring a carrier to comply with a burdensome

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<sup>3/</sup>(...continued)  
1998).

<sup>4/</sup> See attached list of Bristol Bay's 1998 corporate expenses for legal and consulting services which are directly related to Bristol Bay's participation in the APUC proceedings noted above.


requirement which is detrimental to the interests of the carrier and to its customers. The FCC has stated numerous times that it seeks to be a proponent of the spread of telecommunications services to rural areas.<sup>51</sup> In this case, Bristol Bay requests the opportunity to continue service to its rural area customers by means of a waiver of Section 36.621(a)(4) the FCC's rules.

### **Conclusion**

For the reasons explained, Petitioner requests a waiver of the Commission's corporate operations expense cap related to high cost loop support. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver. Accordingly, Petitioner requests that relief granted in the form of a waiver allow all of its corporate operations expenses during 1998 to be accepted as expenses without the limitation imposed by Section 36.621(a)(4) of the Commission's rules.

Respectfully submitted,

**BRISTOL BAY TELEPHONE COOPERATIVE, INC.**

By:   
 David L. Nace  
 B. Lynn F. Ratnavale  
 Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered  
 1111 19th Street, N.W., Suite 1200  
 Washington, D.C. 20036  
 Telephone: 202-857-3500  
 April 14, 1999

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<sup>51</sup> Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

**DECLARATION**

I, Duane C. Durand, hereby state and declare:

1. I am General Manager of Bristol Bay Telephone Cooperative, Inc., a local exchange carrier in Alaska.
2. I am familiar with the facts contained in the foregoing Petition For Waiver, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of April, 1999.

A handwritten signature in black ink, reading "Duane C. Durand". The signature is written in a cursive style with a large, looping "D" at the beginning and a long, sweeping underline.

Duane C. Durand, General Manager of  
Bristol Bay Telephone Cooperative, Inc.

BRISTOL BAY TELEPHONE COOPERATIVE, INC.			
ANALYSIS OF CORPORATE EXPENSES - 1996			
ACCOUNT		TOTAL BY	TOTAL
NUMBER	DESCRIPTION	SUB ACCOUNT	MAIN ACCOUNT
6711.10.1	EXECUTIVE - LABOR	98,671.98	
6711.10.2	EXECUTIVE - BENEFITS	48,878.58	
6711.10.4	EXECUTIVE - OTHER		
	CELLULAR PHONE	1,580.50	
	TRAVEL	50,359.34	
	OFFICER'S LIABILITY	941.79	
	MISCELLANEOUS	117.00	
	ANNUAL MEETING	5,249.35	
		58,257.98	205,806.52
6711.20.1	BOARD OF DIRECTORS - LABOR	1,065.09	
6711.20.2	BOARD OF DIRECTORS - BENEFITS	490.77	
6711.20.4	BOARD OF DIRECTORS - OTHER		
	TRAVEL & SEMINARS	39,476.14	
	DIRECTORS & OFFICERS LIABILITY INS	3,286.24	
	FEES FOR BOARD MEETINGS	3,900.00	
	OTHER	1,503.35	
	TRAVEL TO BOARD MEETINGS	3,035.63	
	HEALTH INSURANCE	1,683.99	
		52,895.35	54,451.21
6721.00.1	ACCOUNTING & FINANCE - LABOR	46,870.39	
6721.00.2	ACCOUNTING & FINANCE - BENEFITS	22,594.42	
6721.00.4	ACCOUNTING & FINANCE - OTHER		
	CELLULAR PHONE	1,782.91	
	AUDIT	27,647.35	
	TRAVEL	28,264.46	
		57,674.72	127,139.53
6725.00.4	LEGAL - OTHER		
	ROBERT STOLLER	74,465.73	
	LUKAS MCGOWAN NACE	4,609.22	
	RURAL COALITION LEGAL	11,178.04	
	BOGLE & GATES PLLC	668.38	
	KEMPPLE HUFFMAN	3,050.25	
	ST OF ALASKA LAW BOOKS	523.85	
		94,726.47	94,726.47
6728.00.1	OTHER G&A - LABOR	35,445.27	
6728.00.2	OTHER G&A - BENEFITS	15,700.69	
6728.00.4	OTHER G&A - OTHER		
	CONSULTING		
	GVNW	50,173.04	
	HONCHEN & UHLENKOTT	98,186.21	
	ASSOCIATION DUES		
	ATA DUES 1998	4,131.00	
	ATA DUES 1999	3,908.00	
	NATIONAL RURAL TELEPHONE ASSN.	985.00	
	NTCA	5,562.72	
	OPASTCO	3,317.36	
	WRTA	1,128.40	
	USTA DUES 1999	1,241.00	
	ITPA	75.00	
	SPONSER ATA ACTIVITIES	1,250.00	
	INSURANCE		
	DIRECTORS & OFFICERS LIABILITY	210.00	
	PROPERTY, GENERAL LIABILITY	17,504.98	
	TELEPHONE		
	OFFICIAL TOLL	10,352.45	
	BBTC 800 #	2,455.77	
	OTHER		
	COMMON EXPENSES ALLOCATION	28,800.92	
	BANK CHARGES	167.60	
	TRAVEL & SEMINARS	1,002.89	
	MISC	685.35	
		231,135.70	282,281.68
			764,405.39



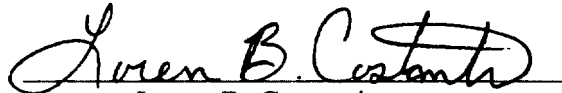
**CERTIFICATE OF SERVICE**

I, Loren B. Costantino, a legal assistant in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 14th day of April, 1999, sent by Hand-Delivery, copies of the foregoing PETITION FOR WAIVER to the following:

Lawrence Strickling, Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-C450  
Washington, DC 20554

Kenneth Moran, Chief  
Accounting and Safeguards Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 6-C463  
Washington, DC 20554

Lisa Zaina, Associate Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 5-C451  
Washington, DC 20554

  
Loren B. Costantino

LUKAS, NACE, GUTIERREZ & SACHS, CHARTERED  
OPERATING ACCOUNT  
1111 NINETEENTH STREET N.W.  
SUITE 1200  
WASHINGTON, DC 20036

FRANKLIN NATIONAL BANK OF WASHINGTON, D.C.  
WASHINGTON, D.C. 20006  
15-154/540

27401

CHECK NO.	CHECK DATE	VENDOR NO.
027401	04/14/99	FCC

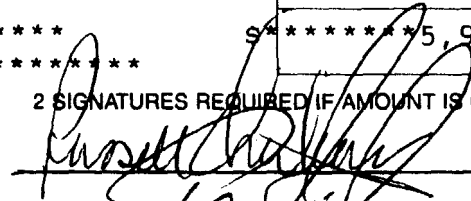
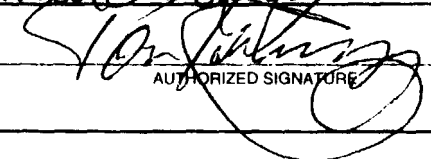
CHECK AMOUNT
\$*****5,960.00

FIVE THOUSAND NINE HUNDRED SIXTY AND 00/100\*\*\*\*\*  
DOLLARS\*\*\*\*\*

2 SIGNATURES REQUIRED IF AMOUNT IS OVER \$2,500.00

PAY  
TO THE  
ORDER OF

F. C. C.

  
  
AUTHORIZED SIGNATURE

⑈027401⑈ ⑆054001547⑆ 10081485⑈12